IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No.9427 of 2005

Shri Shrinivas Mangilal Malu ..Petitioner

vs.

Shri Gulabhand Mangillal Malu ..Respondent

Shri N.J.Patil for petitioner.
Shri Vijay Killedar for respondent.

CORAM: S.B.MHASE J.
7th April, 2006

P.C.

1. Heard the learned Counsel for the parties. Perused the impugned order. The impugned order was passed on 22nd October, 2005 by 2nd Joint civil Judge, Jr.Dn., Jaysingpur below Exh.28 in Reg.Civil Suit No.37 of 2004 is under challenge. Application Exh.28 is an application filed under Order VI Rule 17 of the Code of Civil Procedure seeking amendment in the written statement to incorporate pleading that valuation of the suit property made by the respondent/plaintiff to Rs.25,000/-is inadequate and the valuation of the suit property is Rs.6,00,000/- and further seeking the compensatory cost. This amendment application is filed at the stage when the statement of the respondent has already been recorded. Order VI Rule 17 permits the parties to alter or amend the pleadings at any stage in such a manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties provided that no

application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that inspite of due diligence the party could not have pressed the matter before commencement of the trial. Since in the present matter trial has commenced the petitioner/defendant was under obligation further to plead and bring on record the facts which will satisfy the court that inspite of due diligence the petitioner/defendant could not have raised the points raised in the amendment before commencement of the trial. On the contrary the application states that due to inadvertence and oversight the pleadings in respect of the valuation and compensatory cost were not made and, therefore, the petitioner/defendant be allowed to amend the written statement. The court has considered this aspect indirectly stating that the delay and latches on the part of the party have not been properly explained. The learned counsel submitted that the Court has not relied upon the proviso and it is improper to rely on such a proviso at this stage. Even assuming for that purpose, it is true that the order passed by the Court is justified though justifying reasons may not be reflected in the order and those reasons always upheld by this court. In any circumstances, the order is justified. No interference is called for. Petition is rejected.

(S.B.MHASE J.)